

furnishes the authority and direction for legislative action in setting apart a portion of the general revenue, or State tax, authorized by the section of the Constitution above quoted, and provides that "there shall be set apart annually," not more than one-fourth of the general revenue of the State for the benefit of public free schools. The language, "set apart annually" used in this section, we think, conveys the idea, that the amount set apart out of the general revenue for public free schools should be fixed in the annual appropriation acts. If this be the correct construction of this section, then the "setting apart" of any part of the general revenue for school purposes must be by annual appropriations. Section 6, article 8, of the Constitution restrains the Legislature from making an appropriation for a period longer than two years. The bill, then, in so far as it attempts to appropriate permanently, or for a longer period than two years, any specific part of the general revenue for school purposes, is unconstitutional. The committee are unanimous, so far as expressed, in the opinion that the present and prospective condition of our State finances, will justify an appropriation, in the proper way, of one-fourth of the ad valorem tax for the use of free schools, and that such an appropriation should be made in the general appropriation bill.

BUCHANAN of Wood, Chairman.

Bill read first time.

Senator Shannon gave notice that a minority report on the foregoing bill would be presented.

Also, that a motion would be made to reconsider the vote by which Senate joint resolution No. 20 was engrossed on yesterday.

Senator Lane, chairman of Committee on Finance, submitted the following reports:

COMMITTEE ROOM,  
AUSTIN, January 28, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Finance, to whom was referred Senate bill No. 87, entitled "An act to amend articles 4746, 4747, and 4748 of the Revised Statutes of the State of Texas, adopted at the regular session of the Sixteenth Legislature," have duly considered the same, and I am instructed by the committee to report the bill back to the Senate with recommendation that it do pass.

LANE, Chairman.

Bill read first time.

COMMITTEE ROOM,  
AUSTIN, January 28, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Finance, to whom was referred Senate bill No. 19, entitled "An act to amend article 4662, chapter 1, title 95 of the Revised Civil Statutes of the State of Texas, so as to reduce the ad valorem State tax to the rate of forty cents on \$100," beg leave to report that they have duly considered the same, and I am instructed by the committee to report the same back to the Senate, with the recommendation that it do pass.

LANE, Chairman.

Bill read first time.

COMMITTEE ROOM,  
AUSTIN, January 28, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Finance, to whom was referred Senate bill No. 51, entitled "An act to adjust the indebtedness of the State to the permanent school fund, and make an appropriation therefor," beg leave to report that they have duly considered the same, and I am instructed by the committee to report the bill back to the Senate, with the recommendation that it do pass.

LANE, Chairman.

Bill read first time.

Senator Rainey introduced a bill entitled "An act amendatory of article 1151, chapter 2, title 28 of the Revised Civil Statutes of the State of Texas." Referred to Judiciary Committee No. 1.

Adjourned, on motion of Senator Houston, till 10 A. M., Monday next.

#### EIGHTEENTH DAY.

SENATE CHAMBER,  
AUSTIN, January 31, 1881. }

The Senate met pursuant to adjournment, Lieutenant-Governor Storey in the chair.

Roll called—quorum present.

Prayer by the Chaplain.

On motion of Senator Cooper, the reading of the journal was dispensed with and the same adopted.

Senator Stubbs presented a memorial from 2300 citizens of Galveston county in reference to the foreign sailors bill, asking for its passage. Referred to Committee on State Affairs.

Senator Stewart also presented a memorial from citizens of Galveston protesting against the passage of the bill. Referred to Committee on State Affairs.

Senator Stubbs presented a memorial of Colonel W. Moseley, of Brazoria county, commanding the First Regiment of Cavalry of Texas Volunteer Guards, and H. W. Munson, captain of the Prairie Rangers, asking the passage of a law providing for uniforming and encamping the volunteer soldiery of the State. Referred to Committee on Military Affairs.

Senator Terrell presented a memorial of citizens of Lampasas county, asking that the jurisdiction of the county court of that county be decreased to probate business only. Referred to Committee on State Affairs.

Senator Houston, chairman Committee on Constitutional Amendments, submitted the following reports:

COMMITTEE ROOM,  
AUSTIN, January 29 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Constitutional Amendments, to whom was referred Senate joint resolution, No. 14, entitled "Joint resolution proposing an additional article to the Constitution, to be known as article on immigration," have had the same under consideration, and instruct me to report it back, and recommend that it do not pass.

HOUSTON, Chairman.

Resolution read first time.

COMMITTEE ROOM,  
AUSTIN, January 29, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Constitutional Amendments, to whom was referred Senate joint resolution No. 18, entitled, "Joint resolution proposing to amend section 11 of article 8 of the Constitution of the State of Texas," have had the same under consideration, and instruct me to report it back and recommend that it do pass.

HOUSTON, Chairman.

Resolution read first time.

COMMITTEE ROOM,  
AUSTIN, January 29, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Constitutional Amendments, to whom was referred Senate joint resolution No. 12, entitled, "Joint resolution proposing to repeal section 56 of article 16 of the Constitution of the State of Texas," have had the same under consideration, and a majority of your committee instruct me to report it back and recommend that it do pass.

HOUSTON, Chairman.

Senator Lane submitted the following minority report:

COMMITTEE ROOM,  
AUSTIN, January 29, 1881.

Hon. L. J. Storey, President of the Senate:

The undersigned respectfully dissents from the decision of the majority of the committee, in recommending the passage of Senate joint resolution No. 12, proposing the repeal of section 56, article 16 of the State Constitution, for the reason that it leaves it in the power of the Legislature to establish a bureau of immigration, and to make appropriations for the same without any limitation. I hold that this section should be stricken out by an amendment especially limiting the power of the Legislature in making appropriations for that object, I therefore submit the following as a substitute for the original joint resolution.

Be it resolved by the Legislature of the State of Texas, That section 56 article 16 of the State Constitution be so amended as to read as follows:

Sec. 56. The Legislature may make an annual appropriation in an amount not to exceed twenty-five hundred dollars, for the purpose of inviting immigration; and this section shall be no restriction upon the power of the Legislature to make an appropriation for the purpose of gathering statistics, and distributing the same within or without the State.

LANE.

Resolution read first time.

COMMITTEE ROOM,  
AUSTIN, January 29, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Constitutional Amendments, to whom was referred Senate joint resolution No. 27, entitled "Joint resolution proposing to amend sections 5 and 24 of article 3 of the Constitution of the State of Texas," have had the same under consideration, and instruct me to report it back, with the accompanying amendments, and, as amended, to recommend that it do pass.

HOUSTON, Chairman.

#### COMMITTEE AMENDMENTS.

First—Strike out all of section 5.

Second—In section 24, line 17, strike out the word "eight," before the word "dollars," and insert "five" in lieu thereof.

Bill read first time:

COMMITTEE ROOM,  
AUSTIN, January 29, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Constitutional Amendments, to whom was referred Senate joint resolution No. 24, "proposing to amend article 8 of the Constitution, by adding another section thereto, conferring power upon the Legislature to exempt from taxation certain investments in manufactures in Texas," have had the same under consideration, and for the reason that said committee has reported favorably upon an amendment effecting the purpose contemplated by this, I am instructed to report the same back to the Senate, and to recommend that it lie upon the table.

HOUSTON, Chairman.

Resolution read first time.

COMMITTEE ROOM,  
AUSTIN, January 29, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Constitutional Amendments, to whom was referred Senate joint resolution No. 80, entitled "Joint resolution amending section 30, article 16 of the Constitution, fixing the duration of all officers for a period of four years, except members of the Legislature and the judges of the Appellate and Supreme Courts," have considered the same, and instruct me to report the same back to the Senate, with the accompanying amendment, and, as amended, recommend that it do pass.

HOUSTON, Chairman.

#### COMMITTEE AMENDMENT.

Substitute for section 30 the following:

"Sec. 30. All State, district and county officers, except judges of the Supreme Court and Court of Appeals, and members of the Legislature, provided for under the Constitution or laws of this State, shall hold their respective offices for a period of four years, anything in the Constitution to the contrary notwithstanding."

Resolution read first time.

COMMITTEE ROOM,  
AUSTIN, January 29, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Constitutional Amendments, to whom was referred Senate joint resolution No. 32, entitled "Joint resolution proposing an amendment to section 23, article 16 of the Constitution of the State of Texas, substituting another section therefor," have had the same under consideration, and instruct me to report it back and recommend that it do pass.

HOUSTON, Chairman.

Resolution read first time.

Senator Homan, from Judiciary Committee No. 2, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 31, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 2, to whom was referred Senate bill No. 10, entitled "An act to prescribe the requisites of indictments in certain cases," have considered the same, and I am instructed to report the same back and recommend its passage.

The complicated and technical character of pleadings in criminal cases has been a serious impediment to the attainment of the ends of justice in such cases in this State.

This bill, which embodies the admirable provisions of the Alabama code on the subject, provides simple, practical forms for indictments, free from unnecessary verbiage and technical expressions.

In the opinion of a majority of your committee, the adoption of the provisions of the bill cannot but work a most desirable reform in our criminal procedure.

HOMAN, for committee.

Bill read first time.

Senator Buchanan of Grimes, chairman of Committee on Engrossed Bills, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, January 31, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Engrossed Bills have carefully examined Senate bill No. 25, entitled "An act to amend articles 4562 and 4566, chapter 2, of the Revised Statutes, adopted and approved February, 1879."

Senate bill No. 40, entitled "An act to amend chapter 10, title 72, of the Revised Civil Statutes of the State of Texas, by adding article 3609a, providing for the surrender of county convicts by the hirer in certain cases."

And, also, Senate joint resolution No. 20, being "Joint resolution amending section 3, article 7, of the Constitution of the State of Texas, providing for a specific ad valorem school tax, and amending section 9, article 8 thereof, limiting the ad valorem tax for general purposes;" and find said bills and said resolution correctly engrossed.

BUCHANAN of Grimes, Chairman.

Senator Stewart, chairman of Judiciary Committee No. 2, submitted the following reports:

COMMITTEE ROOM,  
AUSTIN, January 29, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 2 beg leave to report that they have considered Senate bill No. 66, entitled, "An act to amend article 801, chapter 3, title 9 of the Code of Criminal Procedure, passed February 21, 1879," and I am instructed by the committee to report the bill back to the Senate with the recommendation that it do not pass.

STEWART, Chairman.

Bill read first time.

COMMITTEE ROOM,  
AUSTIN, January 29, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 2, beg leave to report that they have considered Senate bill No. 90, to be entitled, "An act to amend article 1052, chapter 2, title 15 of the Code of Criminal Procedure," and I am instructed by the committee to report the bill back to the Senate with the annexed amendment, and, thus amended, to recommend that the bill do pass.

STEWART, Chairman.

#### AMENDMENT.

After word "appeals" in section 3, add "provided that no district attorney shall be paid by the State annually more than twenty-five hundred dollars."

Bill read first time.

Senator Buchanan of Wood, submitted the following reports:

COMMITTEE ROOM,  
AUSTIN, January 31, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 78, entitled, "An act to repeal article 1678, chapter 2, title 34 of an act entitled 'an act to adopt and establish the Revised Civil Statutes of the State of Texas,' passed by the Sixteenth Legislature of Texas," relating to compensation of managers of election, have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do not pass.

BUCHANAN of Wood, for Committee.

Bill read first time.

COMMITTEE ROOM,  
AUSTIN, January 31, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 68, entitled "An act to repeal subdivision 5 of article 1198, chapter 4, title 29 of an act entitled 'an act to adopt and establish the Revised Civil Statutes of Texas,' passed by the Sixteenth Legislature of the State of Texas," have had the same under consideration, and I am instructed by a majority of said committee to report the same back, with the recommendation that it do not pass.

The subdivision sought to be repealed by this act reads as follows: "Where a person has contracted in writing to perform an obligation in any particular county, in which case suit may be brought either in such county or where the defendant has his domicile."

BUCHANAN of Wood, for Committee.

Bill read first time.

COMMITTEE ROOM,  
AUSTIN, January 31, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 89, entitled "An act regulating the burden of proof in suits

for land sold and conveyed by the survivor of a community in whose name the title of record to the land stands at the date of sale and conveyance," have had the same under consideration, and said committee unanimously instruct me to report the same back, with the recommendation that it do pass.

BUCHANAN of Wood, for Committee.

Bill read first time.

COMMITTEE ROOM,  
AUSTIN, January 31, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 79, entitled "An act to amend article 1659 of an act entitled 'an act to adopt and establish the Revised Civil Statutes of the State of Texas,' passed by the Sixteenth Legislature of the State of Texas," prescribing the time of holding general elections, have had the same under consideration, and said committee are unanimous in instructing me to report the same back to the Senate with the recommendation that it do pass.

BUCHANAN of Wood, for committee.

Bill read first time.

Senator Davenport offered the following resolution:

*Resolved*, That inasmuch as the accumulation of business requires the Secretary to be absent from the desk at intervals during the daily session; and inasmuch as he and the two assistants are constantly needed at the desk for the purpose of properly carrying on and expediting the business, and all committee clerks being now engaged on committee work, that he be authorized and empowered to appoint a clerk, who shall be a general clerk, to assist in any way in which his services may be required.

Senator Wynne offered the following resolution:

*Resolved*, That the Committee on Educational Affairs be requested to consider the propriety of establishing a State University, and report their action by bill or otherwise.

Adopted.

Senator Cooper introduced a bill entitled "An act for the relief of Mrs. Malinda Hyde." Referred to Committee on Land Claims.

Senator Powers offered a joint resolution instructing our Senators and requesting our Representatives in Congress to use their endeavors to procure substantial and suitable appropriations for the attainment of a larger depth of water on the bars of Brazos de Santiago, Aransas, and Sabine Pass, in the State of Texas. Referred to Committee on Commerce.

Senator Henderson introduced a bill entitled "An act regulating suits and actions for and against persons convicted of felonies." Referred to Judiciary Committee No. 1.

Also, "A bill to amend articles 942 and 946, chapter 4, of title 11, of the Code of Criminal Procedure of the State of Texas." Referred to Judiciary Committee No. 2.

Senator Stubbs moved the adoption of Senator Davenport's resolution appointing a general clerk.

Senator Gooch objected on the ground that the resolution was contrary in spirit to the Constitution, which provided for the election of all Senate officers by the Senate, and moved to refer the resolution to Judiciary Committee No. 1. Lost.

The objection of Senator Gooch was overruled by the President.

Senator Homan moved the previous question on the resolution.

Motion seconded, and the resolution was adopted by the following vote:

YEAS—21.

Buchanan of Grimes	Houston,	Ross,
Burges,	Lane,	Shannon,
Burton,	Lightfoot,	Stewart,
Davenport,	Martin of Cooke,	Stubbs,
Henderson,	Patton,	Terrell,
Hightower,	Powers,	Weathered,
Homan,	Rainey,	Wynne.

NAYS—6.

Buchanan of Wood,	Gooch,	Lair,
Cooper,	Harris,	Tilson,

Senator Shannon, of the Committee on Educational Affairs, submitted the following minority report:

COMMITTEE ROOM,  
AUSTIN, January 31, 1881.

Hon. L. J. Storey, President of the Senate:

The undersigned, a minority of your Committee on Educational Affairs, most respectfully dissent from the report of the majority of said committee, recommending the rejection of Senate bill No. 1, entitled "An act to amend article 8704, Revised Statutes of Texas."

The objection urged by the majority of your committee to the bill is, that it establishes and dedicates "one-fourth of the general revenue, permanently, as a part of the available school fund of the State." The minority of your committee agree that such is the purpose and object of the bill.

The Constitution of the State of Texas, article 7, section 1, declares that "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools," and in section 3 of the same article it says: "There shall be set apart annually not more than one-fourth of the general revenue of the State, and a poll tax of one dollar on all male inhabitants in this State between the ages of twenty one (21) and sixty (60) years, for the benefit of the public free schools."

The minority are of opinion that article 7 makes it the imperative duty of the Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools," to the full extent of the limitation of their power in section 3, viz: to the appropriation of the one dollar poll tax and one-fourth of the general revenue, unless a less amount will accomplish the purpose declared, viz: "The support and maintenance of an efficient system of public free schools."

We believe that all will agree that less than the one-fourth of the general revenue and the poll tax of one dollar will be inadequate to the purpose. If such be the case, it occurs to us that our duty as legislators is clearly and unmistakably pointed out by the Constitution; that is, to go to the utmost extent of our limit under that instrument, if it be necessary to the "support and maintenance of an efficient system of public free schools." The article in the Constitution referred to is mandatory, and the minority think that they cannot conscientiously ignore it by doing less than, within the limit of their power, they can do, in compliance therewith.

Another reason urged by your minority in favor of the passage of the bill, is, that it will, as nearly as can be done by legislation, eliminate the school question from politics and settle permanently what is now, to some extent, an irritating question.

The question of the reduction of taxes is one to which the attention of this Legislature is directed, which fact makes it the more necessary, in our opinion, that this school appropriation question should be definitely settled, so that we can the more safely calculate to what per cent the taxes may be reduced, and still have enough to carry on the current expenses of government after the deduction of the one-fourth for the schools. The bill, in the judgment of the minority, is not in conflict with section 6, article 8 of the Constitution, which restrains the Legislature from making an appropriation for a longer period than two years. It attempts to make no appropriation; it proposes to set apart the maximum required by the Constitution, no part of which can be touched except by appropriations made by the Legislature from time to time.

If it is the honest purpose of the Legislature to carry out in good faith the mandate of the people of the State, as declared in their organic law, in reference to a system of free schools, it occurs to us that we can the better secure its permanency and efficiency by doing all that we can to remove it from the influence of politics, and protect it from the caprice and uncertainty of future Legislatures.

Believing, as we do, that the passage of this bill will add greatly to the permanency and efficiency of the public free school system of the State, and honest in our convictions that such a system will add greatly to the happiness and prosperity of our people, and to the permanency of republican institutions, we most respectfully recommend the passage of the bill.

W. R. SHANNON,  
CHAS. STEWART,  
A. W. HOUSTON,  
S. C. PATTON,  
J. M. MARTIN,  
Minority of Committee.

Senate bill No. 14, entitled "An act to prevent drunkenness, and temporary insanity produced by the excessive use of ardent spirits from being plead in courts of justice in justification of criminal offenses committed in the State of Texas," being special order for the hour, was taken up and read second time, with majority and minority reports.

Senator Stewart moved the adoption of the majority report.



Senator Homan moved the adoption of the minority report as a substitute.

A message was received from the House announcing that that body has passed House joint resolution No. 11, granting leave of absence to the Hon. Joe Abbott, Judge of the Twenty-eighth Judicial District; and House bill No. 35, entitled "An act to amend article 1081, chapter 3, title 15, of the Code of Criminal Procedure, adopted February 21, 1879."

Also, Senate bill No. 4, entitled "An act to repeal article 451, chapter 6, of title 17, of an act to adopt and establish the Revised Civil Statutes of the State of Texas."

(President pro tem. in the chair)

Senator Davenport moved a call of the Senate. Call sustained. Roll called; Senator Buchanan of Wood absent. Pending business tabled.

Senator Houston moved that Senator Martin of Cooke be added to Committee on Constitutional Amendments. Adopted. Senate was announced full.

The minority report on Senate bill No. 14, as a substitute for the majority report, was then adopted by the following vote:

YEAS—18.		
Buchanan of Grimes	Hightower,	Martin of Cooke,
Buchanan of Wood,	Homan,	Powers,
Burges,	Houston,	Ross,
Burton,	Lair,	Terrell,
Cooper,	Lane,	Tilson,
Davenport,	Lightfoot,	Weathered.
NAYS—9.		
Gooch,	Patton,	Stewart,
Harris,	Rainey,	Stubbs,
Henderson,	Shannon,	Wynne.

Senator Lightfoot, offered the following amendment "Amend the caption by striking out the words "justification of," and inserting the words "excuse for," in the caption of the bill.

Senator Hightower offered the following amendment, which was pending on adjournment: Amend amendment proposed by the committee by substituting the following therefor:

Section 1. Neither intoxication nor temporary insanity of mind produced by the voluntary recent use of ardent spirits shall constitute any excuse in this State for the commission of crime. Nor shall intoxication mitigate either the degree or the penalty of crime; but evidence of temporary insanity produced by such use of ardent spirits may be introduced by the defendant in any criminal prosecution in mitigation of the penalty attached to the offense for which he is being tried, and in cases of murder for the purpose of determining the degree of murder of which the defendant may be found guilty.

Senator Wynne moved that Senate bill No. 73 be made special order after pending bill was disposed of, and that it be under consideration from day to day until disposed of. Adopted.

(President in the chair.)

Senator Lightfoot's amendment was adopted.

On motion of Senator Burges, pending bill with amendments was postponed till to-morrow morning after morning call.

On motion of Senator Burges, rules were suspended, and Senate joint resolution No. 20, amending section 3, article 7 of the Constitution of the State of Texas, authorizing the Legislature to levy an ad valorem tax on all the property in the State in an amount not to exceed twenty-five cents on the one hundred dollars, for the benefit of the public free schools," was taken up, consideration postponed, and bill made special order for next Thursday week.

The following messages were received from the Governor:

EXECUTIVE OFFICE, STATE OF TEXAS,  
AUSTIN, January 28, 1881.

To the Honorable Senate and House of Representatives in the Legislature assembled:

I herewith respectfully submit the annexed memorial of the

county commissioners' court of Wheeler county, in this State, in regard to a new judicial district, and to the imperfection of surveys of land, which they desire to have remedied; which in regard to the subject of a new district is endorsed by the Hon. C. C. Potter, judge of the Tenth Judicial District, including the county of Wheeler.

I invite the especial attention of the Legislature to the several subjects mentioned in this memorial. I have had my attention called frequently to the matters referred to, and am satisfied, that they present real grievances, that should be remedied, as far as practicable.

I respectfully recommend, that all of the counties embraced in the territory known as the Panhandle, whether organized or not, be included in one judicial district, and that the law in regard to the organization of new counties be changed so as to require a certain number of settlers, not less than one hundred, who have habitations, and live in them within the limits of the county, before it should be organized; and that when the district judge is satisfied, that there are such numbers of settlers actually residing in their own habitations, within the limits of any such county, that he may then order an election to be held, for said organization and be authorized to do whatever may be necessary to complete the same, and appoint times and a place for holding district courts in said county. And I further recommend that all of the unorganized counties of the State be, in like manner, and under like regulations placed in some judicial district.

To render a county government self-supporting, and self-protecting there should be at least one hundred settlers, in the proper sense of that term, being persons having habitations of some sort, with a view of permanent residence, and not merely transient persons without habitations.

On the other hand, a county, that is in proper situation to be organized, ought not to be dependent for its organization upon another, whose officers may be interested in it remaining unorganized.

Another reason, why some such plan should be adopted, is that district courts should be held in a county regularly, as soon as it is organized. This cannot be done, as the law now stands, as it has been shown in one instance in the last two years, if not in more than one.

I would respectfully recommend also, that steps be taken under the direction of the Commissioner of the General Land office to ascertain the correctness of the statements of the memorialists, in regard to the defect of the surveying of the lands mentioned, and that a law be passed suspending the issuance of patents in the territory referred to until it can be ascertained, whether or not the surveys on the ground are defective as represented; and if so found, that said railroad companies shall be notified to survey, and mark the said lands, so that the locality of State school lands can be found on the ground with certainty, which should be done under the supervision of a surveyor appointed by the said Commissioner.

There can be no question, that if the law has not been complied with in making said surveys, by which the locality of the school lands cannot be ascertained with certainty, the State has a right to require it to be done by the railroad companies, or by others to whom they may have made transfers, before the patents are, or can be required to be issued. It is evident that such a defect would be an almost insuperable impediment in the settlement of that section of the country, to which much attention is now being attracted for its settlement.

In this connection I would ask to call attention to a number of settlers in Oldham county, mostly Mexicans, who have been settled there for a number of years past, and who have complained to me repeatedly, that the lands upon which they settled have been surveyed since their settlement upon them, and that they were at a great distance from any organized county, and were not informed of the necessity of making application for pre-emptions, but rested securely upon their settlement in good faith being all that was necessary to secure them the homesteads, which they improved. The Commissioner to survey the capital lands, Colonel N. L. Norton, has been there, and can give information of their condition, should it be desired by committees of the Legislature.

For the persons who have settled upon the frontier, both in the Panhandle and in other portions of it, I respectfully bespeak your special care and attention, by which its settlement may be greatly facilitated, and hastened, by a good population fixed upon the soil permanently, which will greatly relieve that section from the desperate characters, with which it is infested.

Respectfully submitted,

O. M. ROBERTS, Governor.

Hon. O. M. Roberts, Governor of Texas:

Sir—We, the Commissioners' Court of Wheeler county, Texas, in behalf of the people of the Panhandle of Texas, respectfully represent to your Excellency some of the wants of the people of



this section, for which we think it to be in the power of the Legislature to grant relief.

Wheeler county has now been an organized county about nineteen months. During that time we have had but one district court held by the regular judge of the district. This is not owing to any fault of the judge, but more particularly to the great distance we are separated from the other counties composing his district. The nearest county seat to us of any organized county is Henrietta, in Clay county, from which we are separated by a space of two hundred and ten miles, nearest road measurement, of frontier country occupied by cattle ranches alone. It will require full three weeks for the judge to come here, hold court and return; and this in the winter season, when the weather is bad, is next thing to an impossibility. We therefore request that a separate judicial district may be created, composed of the Panhandle counties. Oldham county, which lies on the border of New Mexico, the centre of which county is more than one hundred miles west of this place, is now an organized county, and it will be impossible for the judge of the Tenth Judicial District to hold the courts there. We have now in the Wheeler county jail several prisoners under indictment for murder, who cannot have the question of bail determined for the reason that the writ of habeas corpus is beyond reach.

We ask for this separate district, because the taxes paid to the State by the Panhandle counties are more than sufficient to cover the expense which this district would be to the State of Texas. Other counties will be ready to organize before another meeting of the Legislature.

Another growing need to this section is a separate land district. Nearly all the Panhandle counties are attached to Jack county for land purposes, the county seat, Jacksboro, being further distant than Henrietta. The inconvenience arising in this respect is necessarily very great. A portion of the Panhandle counties were assigned to Clay county for land purposes, but a question has arisen as to whether or not the Clay county surveyor ever perfected his right to make surveys in this county by securing manuscripts of previous surveys.

Another matter of the most vital importance to our section consists of the land locations made by various corporations to which previous Legislatures have made large land grants. For instance, nine-tenths of the land in Wheeler county consist of the surveys of the Houston and Great Northern Railroad Company, and the alternate State school sections. These lands were never surveyed on the ground and the corners marked. But from the best information to be obtained on the subject, the surveying party which located for the railroad company did nothing more on the ground than to meander the principal streams. The result is that the settlers here are unable to determine definitely whether they are on State school lands or railroad lands, and are unable to perfect their title.

We ask therefore that the Legislature may consider the question as to whether the railroad company has complied with its contract relative to land locations, and if they have not, that the grant may be declared void, or at least the company be required to survey their lands, and mark the boundaries so that the State school sections may be identified. But few of these surveys have as yet been patented, and therefore we think that they are as yet under the control of the Legislature and Executive Department of the State government. We ask this, not for the benefit of Wheeler county alone, but in behalf of all that portion of the Panhandle where these office locations have been made.

Trusting that these suggestions may meet with the approval of your Excellency, we remain with great respect your obedient servants,

A. H. PATTON, presiding,  
THOMAS CAMELL,  
J. R. SANDERS.

By the commissioners' court.

W. L. R. DICKSON,  
Clerk County Court Wheeler County, Texas.

I fully endorse the statements and recommendations made in the foregoing memorial in reference to the judicial district.

C. C. POTTER,  
Judge of Tenth Judicial District of Texas.

January 6, 1881.

Referred to Committee on Judicial Districts.

EXECUTIVE OFFICE, STATE OF TEXAS,  
AUSTIN, JANUARY 28, 1881.

To the Honorable Senate and House of Representatives, in the Legislature Assembled:

I respectfully submit to your honorable bodies a memorial of the heirs of Thomas Toby, accompanied by the statement of Messrs. John M. Swisher and James B. Shaw, who composed the auditorial board to pass upon such claims as those which are referred to in the memorial and who explain the reason why said claims were not passed upon by them, and all which I submit upon the request

of Mr. Simeon Toby, who is a son and one of the heirs of said Thomas Toby, and also on account of the names of numerous gentlemen of the highest respectability, who, I find, have given countenance to the claim set up, and many of whom lived at a time to have had some knowledge or information of its merits.

In presenting this memorial I should premise that I have personally no further information about it than that contained in the papers submitted.

From them it may be regarded as certain that Thomas Toby was the friend and agent of Texas in her struggle for independence; that as such he had running account with Texas, in advances made by him, and payments made to him, which account was kept and is to be found in the Comptroller's Office, as well as by himself in New Orleans, where he did business as a merchant; that in 1838 he filed his vouchers for settlement with the Republic, and claimed a balance in his favor, to which he would be entitled if the amounts on the face of the vouchers were justly due to him for advances as represented by them; and of course, they were justly due if he made the advances, represented in the face of the vouchers, and Texas received the benefit of them to the extent of the amounts charged. These admitted facts evolve the questions, did he expend the moneys for the benefit of Texas as her agent for the objects and to the amounts as represented by the said vouchers filed by him, and has he never been paid for said advances? That involves exactly the question to pass on and decide which, the auditorial board, composed of Messrs. Swisher and Shaw, was created. They did not pass upon, and decide those questions, as they say themselves, Messrs. Darden and Dorn did not decide those questions, as their report, quoted in the memorial, shows that they simply stated how the accounts stood upon a view of the books, and the vouchers on their face as found in the office in January, 1875.

Those are still the open questions to be decided by this Legislature, should it take action.

What is the proof that the charges are correct and the advances were made as claimed in the vouchers, I am not informed. It is proper that I should state, that his claim, had it been audited, and allowed by the auditorial board, composed of Messrs. Swisher and Shaw, would have belonged to the class of claims against Texas, provided for by the act of Congress, which retained a part of the purchase money contracted for, in the sale by Texas to the United States of the part of New Mexico previously claimed by Texas; and would have been paid its pro rata out of said fund so retained, as other such claims were, when presented at the Treasury of the United States.

There is still an amount of that fund not paid out by the United States, estimated at about one hundred and one thousand dollars, as I am informed.

This claim has been presented to different Legislatures since that of 1874, including that one. If it can be shown to be shown to be a just one some provision should be made for it. If it cannot be so shown, such an examination should be made and such action should be taken, as would terminate the matter.

It is mainly in that point of view, that I have deemed it proper to present the memorial to the Legislature, and respectfully invite their attention, without as yet having made such examination as would enable me to recommend the allowance of the claim.

Respectfully submitted,

O. M. ROBERTS, Governor.

#### PETITION OF THE HEIRS OF THOMAS TOBY, DECEASED.

To His Excellency, Governor O. M. Roberts, and the Honorable the Senate and House of Representatives of the State of Texas:

The petition of Simeon Toby, a son of Thomas Toby, deceased, on behalf of his five sisters, Eliza, Clara, Dephine, Alabama and Fannie, and his brother and himself, respectfully represents:

In the early and dark days of the Republic of Texas, their father, Thomas Toby, who was then wealthy, was appointed agent of the Republic of Texas, at the city of New Orleans, to purchase and forward provisions, clothing, arms, ammunition and supplies for its army and navy, and, in the discharge of the duties of said agency, he, at the same time, made large advances, chiefly in cash, at the request, and for the benefit, of the government. He advanced, at the instance of the government, upwards of seventy thousand dollars, when it could not exist and carry on its desperate struggle with Mexico but for his timely aid. (See exhibits H, I, J, K, L and M.) He filed his receipt, accounts and vouchers with the proper department in 1838. They were officially and repeatedly admitted to be correct and just, but were not paid because the government had no money with which to pay them.

This debt, which is by no means unknown to you and your citizens, was incurred for the independence of Texas, and was presented for payment in 1838, and with accompanying vouchers, has remained on file ever since, and payment has been urged before each Legislature since 1874. I shall as briefly as possible give you some of the many points bearing upon the claim, with its history, and in

behalf of myself and co-heirs (fatherless and motherless) ask a government (which has at no time even questioned the justice of our claim, with which we have never parted) to do what it can not fail to do without dishonor, to pay what in morals and in law it has from the first conceded and now admits to be due.

At the commencement of the revolutionary war with Mexico in 1835, Stephen F. Austin, Branch T. Archer and William H. Wharton were sent to the United States as commissioners to raise means with which to prosecute the war. At this time Thomas Toby was a merchant prince in New Orleans. These commissioners formed his acquaintance, and, by and with their authority, and subsequently confirmed by the President of the Republic, he became the agent and friend of struggling Texas.

Shortly afterwards a quantity of land scrip was placed in his hands, limited in price at fifty cents an acre, and Mr. Toby commenced purchasing and forwarding supplies of provisions and munitions of war.

In consequence of the uncertainty of Texas being able to maintain her independence, and high price placed on the scrip by the government, Mr. Toby was unable to dispose of any considerable quantity of it, and consequently advanced the means from his own private fortune, and thus the indebtedness arose. In 1833, Mr. Toby, despairing of being able to dispose of any more land scrip, returned all that remained unsold to the Secretary of the Treasury, filed the vouchers and asked to be reimbursed for his advances—thus voluntarily surrendering to the State the securities he held for his loan, and relying entirely upon her honor and unanimity for the payment of his advances. The Secretary could not make the payment without an appropriation; and even had there been one, it would have availed nothing, for the treasury at that time was penniless. However, Governor Henry Smith, who was then Secretary of the Treasury, referred the accounts and vouchers to Congress, and wrote to Mr. Toby to come and attend to the matter. But at this time Mr. Toby could not leave New Orleans. The great financial panic that swept over the United States in 1837 and 1838, bringing ruin and desolation to thousands upon thousands who were engaged in commercial pursuits, did not leave Mr. Toby unscathed, but rendered him entirely penniless and broken down in mind and body. He wrote under date of December 27, 1838: "My pecuniary affairs operate on my mind, and the grave 'ere long will close all my worldly troubles. My walks are prescribed to the parish I live in."

By reason of his advances to the government of Texas, and her failure to pay him, he became involved in debts, and, under the laws of Louisiana, then in force, he was not permitted to leave the parish of his residence, and he remained in the parish until 1849, when he died, broken in fortune and mind, leaving a non-resident and helpless widow and minor children, who were unable to press their admitted claim, and who, had they been able, did not know how to obtain money from a government without funds in its treasury, without credit at home or abroad, and not in a condition to meet the current expenses of its civil list.

Mr. Toby's claims before the Congress of the Republic being left unrepresented in consequence of his inability to leave New Orleans, were passed over without action by that body, and in 1839 were boxed up along with the archives of the Treasury Department, taken to Austin and placed on file, where they have ever since remained.

Since the meeting of the last Legislature of Texas, Mrs. Clemence Toby, widow of Thomas Toby, deceased, and mother of petitioners, has departed this life, leaving her children, who are sole heirs of her father, Thomas Toby.

We subjoin a synopsis of the official action of the government on the claim.

First—November 3, 1838. Hon. Henry Smith, Secretary of the treasury, reports that Thomas Toby had filed his final accounts and vouchers, showing a balance due him of \$70,000. (See Exhibit A.)

Second—January 19, 1875. The Comptroller and Treasurer of the State, under a resolution of the Legislature of the twenty-seventh of April, 1874, were required to reinvestigate the claims. After careful examination, with the books and records of the government and such of the vouchers as had not been lost by the government, then before them, they report that competent proofs established that the principal sum due Thomas Toby, deceased, exclusive of missing vouchers and interest after the filing of the claim in 1838, amounted to \$59,448 44. (See Exhibits B and C.)

Third—February 20, 1875. The Judiciary Committee of the House of Representatives, to whom was referred the report of the Comptroller and Treasurer, report that they find due Thomas Toby, for actual cash advanced by him for the government, exclusive of commissions, interest and missing vouchers, the sum of \$45,535.44, and recommend the payment of the same. (See Exhibit D.)

Fourth—January 21, 1879. The Comptroller and Treasurer of the State, under a resolution passed August 21, 1874, again report that, according to the accounts and vouchers in their respective

offices, they find due Thomas Toby \$59,448.44. (See Exhibits B and C.)

Fifth—February 19, 1879. The Finance Committee of the Senate, to whom was referred the report of the Comptroller and Treasurer, report that they find due Thomas Toby \$45,000, and recommend the payment of the same. (See Exhibits E, F and G.)

Still no appropriation was made to pay this re-audited and re-acknowledged debt. The difference in amount in these several reports will be seen by reference to the reports themselves.

Having submitted a short history of our claim and given some data, we do not again present it and ask its payment as a matter of favor, but of right. It was not our fault that when this just claim was properly filed, accompanied by full proofs (some of which the government, to which they were confided, has since lost) it was not paid. It was officially admitted to be just and never has been questioned. It was not paid solely because, when presented, the government was unable to pay.

This is, perhaps, the only revolutionary debt of the Republic of Texas that remains unpaid. Though, perhaps, the first claim of its class of any magnitude that was promptly presented and as promptly admitted, the government has not thought proper to act upon it further than to have it re-audited, and even then failed to make the necessary provisions for its payment.

We do not invoke sympathy, but ask for mere justice, which has thus far been delayed without sufficient cause. We request the State of Texas to do what an honorable man similarly situated would be bound to do—to pay the amount, no more and no less, honestly due, to put us on the same footing as other and less meritorious creditors that have been paid.

Had we been permitted to sue, no court would have refused to adjudge us both commission and interest on cash that was advanced against a debtor who, after losing a part of our vouchers, deferred, without our consent, paying what was re-admitted, as well as proven to be due.

Asking your favorable consideration, respectfully submitted,

SIMEON TOBY.

New Orleans, January 3, 1881.

#### SYNOPSIS OF THE ACTION OF THE GOVERNMENT OF TEXAS ON THE CLAIM OF THOMAS TOBY.

##### EXHIBIT A.

*Report of the Secretary of the Treasury of the Republic of Texas.*  
(Original on file in Comptroller's Office.)

TREASURY DEPARTMENT,  
CITY OF HOUSTON, November 3, 1838. }

I would inform your Excellency that since my last communication on the subject of this agency (Thomas Toby, N. O.) I have received his final accounts with the government, which presents a balance in his favor of upwards of seventy thousand dollars.

As these accounts are intricate, and many charges found in them which I do not feel authorized to allow, I would respectfully suggest to your Excellency to recommend to Congress that a joint committee be appointed to examine the same, in conjunction with the chief clerk of this department, to the end that the same be properly adjusted.

HENRY SMITH, Secretary of the Treasury.

##### EXHIBITS B AND C.

(See House Journals Second Session Fourteenth Legislature, pages 140 and 141. Senate Journals Sixteenth Legislature, pages 86 and 87.)

COMPTROLLER'S OFFICE,  
AUSTIN, January 20, 1879. }

Hon. Wells Thompson, President of the Senate.

In response to the Senate resolution, passed August 21, 1876, "requiring the Comptroller and Treasurer to report if there is on file in their respective offices any claims, which were omitted and neglected to be examined and reported upon by the Auditor and Comptroller, under the provisions of certain acts approved February 7, 1853;" be it

*Resolved*, That the Comptroller of Public Accounts and State Treasurer are hereby required to report, for the information of the Legislature, at its next session, what claims, if any, which were properly and lawfully filed in the proper department of the government, which were neglected or omitted to be acted on and reported upon by the Auditor and Comptroller, under the provisions of "An act to provide for ascertaining the debt of the late Republic of Texas," approved February 7, 1853. If there be any such claims, stating their character and the amount legally and justly due thereon, as shown by the accounts and vouchers on file and the records of their respective offices.

We have the honor to report that we know of no unaudited claims as having been filed under the provisions of the acts above referred to, nor has our attention been called to any except the claims of the



heirs of Thomas Toby, agent, during the revolutionary war between Texas and Mexico, upon which we reported under resolution to the Fourteenth Legislature, January 14, 1875. For amount of claim reference is made to the above mentioned report, a copy of which is herewith appended and made a part of this report, to-wit:

COMPTROLLER'S OFFICE,  
AUSTIN, TEXAS, January 19, 1875. }

Hon. Guy M. Bryan, Speaker of the House of Representatives:

In obedience to a resolution passed by your honorable body on the twenty-seventh of April, 1874, which reads as follows, viz: "That the Comptroller of Public Accounts and Treasurer of the State be and they are hereby instructed to furnish to this House, at its next session, all information in relation to the claims of Thomas Toby that is on file in their respective offices," we have the honor to submit for your consideration the accompanying statements, which embrace all the information to be had on the subject, from an examination of the records of our respective offices. The claims presented by Thomas Toby for his credit, we have subdivided into three classes, viz: first, second and third, the character of each of which is explained in statements submitted. The amount aggregating for his credit \$154,328 38; the amounts of his debt to the State from various sources, including the sale of land scrip, \$94,879 94, showing balance in favor of Thomas Toby, \$59,448 44. In the above credits is included interest at the rate of ten per cent up to the time the final account was rendered March 31, 1838. There is also included in the credits above five per cent commission on shipments, also five per cent commission upon the whole amounts of the first issue of land scrip, which he claims by reason of his having the scrip printed at his own personal expense.

We append a list of claims for which the vouchers are missing, a part of which appears to have been acted upon by the Secretary of the Treasury in 1837, and passed to the credit of Thomas Toby. The remainder do not appear to have been examined. Neither of these classes has been included in the credits, but are referred to the Legislature to determine whether they should be included in the account or not. After a careful examination, we find no evidence that any of the above claims have ever been audited, or any money paid on account of the same. We have compared them with the accounts of McKinney & Williams, and find that they include no item of the claims presented by Thomas Toby.

We have the honor to be, very respectfully, your obedient servants,  
STEPHEN H. DARDEN, Comptroller.  
ANDREW J. DORN, Treasurer,

#### EXHIBIT D.

*Report of House Committee, Second Session, Fourteenth Legislature on the Claim of Thomas Toby, submitted February 20, 1875.*

(See House Journals, Second Session Fourteenth Legislature, page 357.)

Hon. Guy M. Bryan, Speaker of the House of Representatives:

Your Judiciary Committee No. 1, to whom was referred the report of Hon. Stephen H. Darden, Comptroller, and Hon. A. J. Dorn, Treasurer, with accompanying itemized account of Thomas Toby, have had the same under consideration, and beg leave to report that, upon careful and thorough investigation of the account of the said Thomas Toby, we found that said account called for the payment by the State of \$59,448.44, besides an additional amount of \$4,003.18 for which the vouchers were missing, making in all \$63,451.62; from this amount we concluded to deduct the amount for which the vouchers were missing (\$4,003.18), also the amount paid by the said Toby for the printing of scrip, including his commissions, amounting to \$13,913.00 making in the aggregate \$17,916.18, which reduced the amount of said claim against the State to \$45,535.44, being the actual amount advanced by the said Thomas Toby for provisions, clothing, arms, ammunition, etc., for the use and support of the army and navy of said Republic in 1836, 1837 and 1838, no interest being allowed or included from the rendition of the account, April 1838; and it appears from said report of the Comptroller and Treasurer that no portion of the above claim has "been audited or any money paid on account of the same" by the State; and as it also appears by a certificate from the Treasury Department at Washington City that no portion of it has been audited or paid by the United States, we therefore, as the result of such investigation, submit the accompanying bill, and recommend that it do pass.  
JOHN W. HARRIS, Chairman.

#### EXHIBIT E.

*Report of the Finance Committee of the Senate, Sixteenth Legislature, on the Claim of Thomas Toby, submitted February 19, 1879.*

(See Senate Journals, page 321.)

Hon. J. D. Sayers, President of the Senate:

Your Committee on Finance have had under consideration the memorial of Mrs. Clemence Toby, together with the itemized accounts of Thomas Toby against the State of Texas, for the amount

of \$63,451.62, as furnished in the report of Stephen H. Darden, Comptroller, and A. J. Dorn, Treasurer. Your committee believe that the said claims, to the amount of \$45,000, is just, due and meritorious, and that, so far as they have been able to ascertain, has never been paid. Your committee would therefore recommend that the said petition of Mrs. Clemence Toby, to the amount of \$45,000, and no more, be allowed in full payment of said claim.

STOREY, Chairman.

#### EXHIBIT F.

*Remarks of Senator Storey, Chairman Finance Committee, before the Senate, when the preceding Report was under consideration.*

(See Senate Journals, page 432.)

Senator Storey said:

MR. PRESIDENT—Conscious that I am in the minority upon this question, and as it seems fashionable of late to explain the reason for the faith within us, I beg to say that, after a careful investigation into the merits of this claim, I believe it to be just. We found, from the correspondence between General Sam Houston and Thomas Toby, and the records of the State Department, and the Treasurer's and Comptroller's offices of the State, and from the evidence of such old Texans as Gov. E. M. Pease, Col. James B. Shaw, Col. John M. Swisher and Col. Brewster, all of which evidence shows beyond a reasonable doubt that the claim is just, due and unpaid. Not one syllable of evidence has been offered by the opponents of the claim to throw the least suspicion on it, except its age, and the evidence before the committee was ample to justify the conclusion that it was not the fault of Thomas Toby or his heirs that this claim should have been so long neglected. I can not afford to vote against a bill this. I believe the supplies for which payment is claimed furnished the very life blood of the Republic. Thomas Toby was almost the only friend to whom Texas could look outside of her borders for provisions, munitions of war, etc. He responded nobly to the prayers of her struggling people, and soon thereafter departed this life. Texas has never discharged the debt, and we should at least recognize the claim as a valid and subsisting debt in favor of his heirs, because I believe it to be right. I vote yea.

#### EXHIBIT G.

*Reasons Assigned by Senators for voting on the Toby Claim when the preceding Report was under consideration.*

(See Senate Journal, Sixteenth Legislature, pages 432 and 433.)

SENATE CHAMBER,  
AUSTIN, March 2, 1879.

The undersigned members of the Senate avail themselves of the privilege of spreading upon the journals their reasons for voting for the report of the Committee on Finance, which recognized the fact that the State of Texas is indebted to the late Thomas Toby, and proposing to pay the representatives of said Toby the sum of \$45,000 in satisfaction for all demands against the State.

The claim of Thomas Toby originated during the struggle between Texas and Mexico. Mr. Toby was distinguished at an early period of the contest as the friend of Texas and constitutional freedom. He was made the agent of Texas and entrusted with the sale of land scrip to the quantity of five hundred thousand acres. President Burnet indorsed him officially as such in May, 1836, and continued to do so until the end of his term. Soon after being inaugurated, President Houston addressed Thomas Toby & Bro. officially as the agents of the Republic of Texas. His first communication was dated November 8, 1836, and the correspondence extended to about two thirds of President Houston's term of office.

The official correspondence establishes the following facts:

1. The Mexican government was straining every nerve to make another formidable invasion of Texas during the summer of 1836.

2. Texas had few men in the field, and called for volunteers.

3. Thomas Toby advanced money, arms, ammunition, clothing and provisions. He made advances to fit out war vessels, and to forward volunteers to Texas. In short, he furnished Texas the sinews of war.

4. If he had not done so the army of Texas would have been compelled to disband, and the people would have been driven out or butchered.

5. In February, 1837, President Houston forwarded requisitions to Thomas Toby, and said: "I hope to God you will have them filled; it is important to us. If our army is not supplied, all our blood has been in vain." He repeated that declaration substantially on other occasions.

6. President Houston promised to repay Thomas Toby for advances.

7. This debt was incurred to maintain the independence of Texas. The Texas army supplied by Thomas Toby, prevented a Mexican



invasion, and the consequences resulting from the war of extermination declared and waged against Texas.

8. Thomas Toby accounted for every acre of land scrip placed in his hands, and presented vouchers for money expended for the Republic of Texas. They are on record in the Comptroller's office. In accordance with a legislative resolution, the Comptroller and the Treasurer of this State made a statement of the Thomas Toby claim, and reported the sum of over \$45,000 due Thomas Toby, as per vouchers on file.

9. Ex-Governor Pease, ex-Comptroller Shaw, ex-Auditor Swisher and Col. Brewster testify to the justice of Thomas Toby's claim, and that it has never been paid.

10. There is no evidence in any department of this government, known to us, of any payment of Thomas Toby's claim.

14. We believe said claim was made under circumstances which constitute it almost sacred; that equity, gratitude and a proper regard for the reputation of our State demands its recognition and liquidation.

We cannot subscribe to the doctrine that length of time lessens and discharges our obligations to pay a claim which has been presented eight times, before even a statement thereof was made by the authorized agents of the State. We feel that in voting to recognize the claim of Thomas Toby, we were shielding Texas from the charge of repudiating a claim she is morally bound to pay as an act of gratitude and justice to a noble man who was her friend and benefactor in the dark days of danger and peril.

JOHN S. FORD,  
A. P. MCCORMICK,  
CHAS. D. GRACE,  
JOHN M. DUNCAN.

*Extracts from a few Letters addressed to Thomas Toby by the authorities of the Republic of Texas in 1836 and 1837.*

#### EXHIBIT H.

From the Secretary of State, by direction of President Burnet and Cabinet.

DEPARTMENT OF STATE,  
VELASCO, May 28, 1836.

To Thomas Toby, Esq., New Orleans:

Sir—In times of general prosperity, the capitalist who advances funds to a government deserves nothing more than a fair remuneration for his loan, but when an infant republic, just sprung into existence, without a government at home or credit abroad, is compelled to carry on a defensive war against a powerful tyrant, whose watchword is extermination, and whose march is traced by the desolation left behind him; when a cloud of the most dark and angry character was lowering over us, when "hope deferred" had almost sunk into despondency, the man who, like you, could fearlessly step forward and risk his fortune and credit in our behalf, deserves and receives a nation's gratitude.

But for the frequent and well-timed aid you have so liberally afforded, it is scarcely probable that we could have sustained the war up to the present period, and Texas, the fairest portion of the continent, might now have been what Santa Anna has threatened to make it—a howling wilderness.

W. H. JACK, Secretary of State.

#### EXHIBIT I.

From President Burnet.

EXECUTIVE DEPARTMENT,  
VELASCO, June 20, 1836.

To Thomas Toby, Esq., Texas Agent, New Orleans:

Sir—Texas never required the prompt and efficient action of the friends of human liberty more than at this moment. Your zeal, as heretofore manifested, is a sure guarantee that you will not be lacking now. Your obedient servant,

DAVID G. BURNET.

#### EXHIBIT J.

From President Houston.

COLUMBIA, TEXAS, February 31, 1837.

To Thomas Toby, Esq.:

My Dear Sir—You will ere this have seen Colonel Thurston, the Commissary General of Texas. With him was sent requisitions, and I hope to God you will have them filled; it is important to us. If our army is not supplied, all our blood has been shed in vain.

Your friend,

SAM HOUSTON.

#### EXHIBIT K.

From President Houston.

COLUMBIA, TEXAS, March 10, 1837.

To Thomas Toby, Esq.:

Dear Sir—I desire that five hundred stand of arms be forwarded to the army as soon as possible, and for God's sake do send bread-stuffs to the army and to Velasco—to the army for fifteen hundred men for two months, and to Velasco for two hundred men.

Last night I heard from the army that there had been no bread-stuffs for ten days past, nor had they news of any coming.

Do, my friend, I beg you, forward provisions agreeably to the requisition made by Colonel Thurston. The supplies sent for are indispensable to the salvation of the army. Unless our friends now sustain us, it will leave Texas in a situation as deplorable as it was on the twentieth of March last year.

You need entertain no fears of being amply requited by the government for any advances which you may make to the country. I feel confident that every allowance will be made by the government, so as to give complete indemnity to those who may be responsible for any aid rendered to our necessities.

Your friend,

SAM HOUSTON.

#### EXHIBIT L.

From President Houston.

COLUMBIA, March 17, 1837.

To Thomas Toby, Esq.:

Dear Sir—Seventeen hundred men are now in the field, and about five hundred not armed. The supplies can only last four days longer. For God's sake do something, or we must lose all that we have gained, and our country. The supplies in it are much exhausted.

We must be supplied!

You may rest assured on receiving ample remuneration for any responsibilities which you may incur.

Your friend,

SAM HOUSTON.

[NOTE.—The foregoing are but a few of the many appeals made to Mr. Toby for aid by Texas during her revolutionary struggle with Mexico. The originals of the letters, from which these extracts have been made, will be found in the State Department and Comptroller's Office.

#### EXHIBIT M.

[The following is a copy of a letter from Hon. M. S. Munson, of Brazoria county, who was chairman of the sub-Committee of the Judiciary Committee of the Fourteenth Legislature, to whom was referred the Toby claim.]

AT HOME, December 14, 1880.

My Esteemed Friend—Replying to your valued favor respecting the indebtedness of the State of Texas to heirs of Thomas Toby, late of New Orleans, Louisiana, for supplies furnished Texas in her period of poverty and deepest gloom, I fully concur with you in the opinion that "there never was a more meritorious claim, and, for the honor of the State, it should be paid."

In times past I had occasion to examine the Toby claim in detail, with much care, and can testify that such examination cannot fail to impress one with regret that this act of justice has so long been delayed. I trust the approaching Legislature will give this matter merited and full attention.

Truly your friend,

M. S. MUNSON.

#### NO. 3. C.

*Testimonial of Citizens of New Orleans regarding Mr. Thomas Toby's standing as a merchant.*

The undersigned citizens of New Orleans do hereby testify that we were acquainted with Mr. Thomas Toby during the years 1835, '36, '37 and '38, and were well aware of his agency for the Republic of Texas; and we will vouch for his character as a merchant of the strictest integrity, and any account presented by him would be *prima facie* correct.

William Bosworth,

R. J. Parfrey,

James I. Day,

B. Biscoe,

Thomas Sloo,

New Orleans, December, 1873.

L. L. Ferriere,

David McCoard,

J. U. Lavillebeuvre,

L. F. Genieres,

John Hall.

#### NO. 4. C.

*Testimonial of Citizens of the Republic of Texas cognizant of the aid and services rendered by Mr. Thomas Toby.*

STATE OF TEXAS, December, 1873.

It affords us pleasure to state that we were well acquainted with the active part taken by the late Thomas Toby, of the city of New Orleans, in behalf of the cause of the independence of Texas. He acted as general agent for the Republic in said city during the years 1836, '37 and '38, and in that capacity rendered signal service to the cause, as was well known to those of that day; indeed, his name is intimately associated with the history of that period.

He was zealous in his efforts, rendering all the aid in his power, both pecuniarily and personally, for the support of our army and navy, and for the cause generally. This was at a time, too, when

there was but little prospect of reward. It was then in the balance whether Texas was to become free or remain an appendage to Mexican rule.

We have understood that there is a balance due the estate of Mr. Toby for advances made by him to the government at this critical period. If this is so, now that the State is able, we can not doubt but that the Legislature will promptly meet and liquidate any just claim that the heirs of Mr. Toby may have. This would be but sheer justice to them, as well as a duty on the part of the State.

Assistance rendered, when we had neither money nor credit, or scarcely a national existence, and by a party like Mr. Toby, who had no interest, personally, at stake, save that of aiding an oppressed and struggling people to obtain their liberty and independence, "should not be obliterated by time or forgotten in the hour of good fortune," but deserves the gratitude of mankind, and the grateful homage of the people to whom he voluntarily extended his bounty.

Any equitable claim the heirs of Mr. Toby may have for advances made the late Republic should be regarded in the light of a sacred claim, and we hope the Legislature will give it the consideration it deserves.

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|----------------------|-------------------------|
| (5) John Duncan,     | (4) E. M. Pease,        |
| (3) F. W. Johnson,   | Moses Austin Bryan,     |
| (1) Wm. T. Austin,   | E. McLean,              |
| Levi Jones,          | Hamilton Stuart,        |
| John Adriance,       | James Love,             |
| James H. Bell,       | (8) James W. Henderson, |
| (5) John P. Borden,  | R. Lockhart,            |
| Thos. G. Masterson,  | L. J. Latham,           |
| George Quinn,        | T. W. House,            |
| A. Neill,            | Robert M. Elgin,        |
| William J. Jones,    | W. J. Hutchins,         |
| Isaac G. Williams,   | James Bailey,           |
| J. S. Sullivan,      | E. W. Taylor,           |
| R. Hotchkiss,        | C. L. Longcope,         |
| Thomas M. Jack,      | H. R. Allen,            |
| J. J. Hendley,       | W. Richardson,          |
| (6) John G. Tod,     | (5-9) John M. Swisher,  |
| Edwin B. Settle,     | James P. McKinney,      |
| John H. Herndon,     | (5) George Hancock,     |
| J. H. Catlin,        | (7) James H. Raymond,   |
| J. G. McNeil, Sr.,   | (2) William J. Russell, |
| C. L. Cleveland,     | A. McGowan,             |
| John B. Jones,       | W. Holmes,              |
| Geo. L. Hammeken,    | J. L. Hallum,           |
| (5) Oscar Parish,    | John McKnight,          |
| (2-10) Edwin Waller, | Thomas H. Borden,       |
| B. P. Buckner,       | R. & D. G. Mills,       |
| C. Underwood,        |                         |
- (1). At battles of Velasco, Concepcion, Grass Fight; aide-de-camp to Generals Austin and Burleson at the storming of Bexar, etc.
  - (2). At battle of Velasco.
  - (3). Adjutant-General at the storming of Bexar, etc.
  - (4). Secretary to Council; Comptroller in 1837; Governor of State for two terms, etc.
  - (5). At battle of San Jacinto.
  - (6). In Texas navy.
  - (7). Late State Treasurer, etc.
  - (8). Late Lieutenant-Governor and Speaker of the House of Representatives, etc.
  - (9). Late Auditor, etc.
  - (10). Member of the Consultation in 1835; of the Convention in 1836, etc.

AUSTIN, Texas, January 26, 1881.

To His Excellency Governor O. M. Roberts and the Honorable the Senate and House of Representatives of the State of Texas:

We, the undersigned, late Auditor and Comptroller, composing the auditorial board, created for the purpose of ascertaining and adjusting the debt of the late Republic of Texas, do hereby certify that it appears from the records of the Treasury Department of the Republic, that the accounts and vouchers of Thomas Toby for supplies and munitions of war furnished the Government of Texas during the years 1836, 1837 and 1838 were filed for payment in said Treasury Department as early as the year 1838. But for the fact that the government was without money, a settlement was deferred from time to time until the creation of our board; when we found the accounts still on file, unsettled and unacted upon.

Some time during the existence of the auditorial board, between 1848 and 1856 (when it expired by limitation), Col. Thomas F. McKinney, the legal agent of Toby's heir, applied to us to go into an adjustment of the accounts, and issue a certificate for the amount found to be due, principal and interest. We informed him that under the law, we had no authority to allow interest on open accounts; but that we would examine and issue certificates of indebtedness for the principal of the debt found to be due. Upon mature reflection of the agent, he came to the conclusion that if he accepted a certificate for the amount of the principal only, it would prejudice a future claim for interest, and believing that it could not be barred by the statute creating the board, as it had been filed with Auditor and Comptroller according to the provisions of the statute,

he concluded that it would be better for him to appeal direct to the Legislature. Consequently we did not examine the accounts.

Why the agent did not press the claim before the Legislature as he intended, we are unable to state, unless it was that he was fearful that it might be in the way of a large claim of his own which, he pressed vigorously and successfully before the Legislature of 1858. It was not brought before the Legislature of 1860, and the war ensuing shortly afterwards prevented any immediate action on the claim.

As an act of justice to the heirs of this early and fast friend of Texas, we beg to state, that among all the claims acted on by us, amounting to many millions of dollars, there was not a more meritorious one, than the claim of Thomas Toby.

JNO. M. SWISHER,  
JAMES B. SHAW.

Referred to Committee on Finance.

EXECUTIVE OFFICE, STATE OF TEXAS,  
AUSTIN, January 27, 1881.

To the Honorable Senate and House of Representatives, in the Legislature assembled:

I desire to invite your attention to a few matters not embraced in my previous messages. The office of public weigher in my opinion should be abolished. The law establishing the office was designed to protect the person who makes or sells the cotton, and other articles required to be weighed by a public weigher, and to make the weigher entirely impartial by preventing him from having any agency from any party concerned in and about the articles weighed by him. It imposes a personal trust, which contemplated that the officer would do the work, or superintend it, while it was done.

In none of these leading objects has the law been fulfilled, except in occasional instances, so far as I have been able to ascertain. Doubtless some officers have done it strictly, but there has been no uniformity in the execution of the law. The general rule of weighing is to use the balances simply to approximate the weight of the cotton and the weigher guesses or estimates the true weight, and marks that on the bale as its weight, and the weight as indicated by the balances is not noted, either on the bale or in his certificate of its weight, and is, or may be a secret known only to himself, unless the person having the cotton weighed is present, and looks at the figures on the balances, indicating the weight of his cotton.

In some cases the different weighers have joined in the business at the same place and have had a monopoly, so that there was, in effect but one weigher. In some cases, they connect some other business with it, such as shipping and warehouse business.

In some cases a weigher has taken in a partner who is not a deputy, and established a firm, who weigh, and give receipts in the partnership name.

In some cases, I might say in many, the person appointed never weighed a bale of cotton, and gave it but little or no attention, but employed deputies, who did the work, and got half of the compensation for it, while the officer who did nothing got the other half.

In some cases there has been an underbidding below the legal price to get custom.

In some there has been a sort of insurance, guaranteeing that the weight would hold good on transfer to another market, within a certain fixed limit.

One great objection to this office is, that if there is anything wrong done in weighing cotton, the merchant, who buys the cotton in the absence of the owner, or the factor who sells and accounts for the cotton, throws off the blame on the weigher, and thus it may be made a shelter for doing wrong, whereas, if there is a wrong done in the weight of the cotton, the responsibility ought to be directly upon those who buy or control cotton in the absence of the owner. Another objection is that one who has influence to get the office, simply draws a profit from the labor of others, as deputies, which has a demoralizing effect, and brings the government into discredit that allows such a thing to be done.

For more than year I did what I could to put the offices in the hands of those who did the work; and to prevent a connection with any other business relating to the cotton and to prevent combinations that would produce monopolies in the business, and I am not aware that I have accomplished much good in it. For that reason I have not made many appointments in the last six months, and do not expect to make any more, except at such places as those at which the law requires it to be done, as I do not believe it to be for the public interest to do it.

I respectfully invite your attention to another office, to wit, that of cattle and hide inspector. It has frequently been represented to me as a useless office, that does not generally accomplish the objects for which it is designed, but I have no such information as would enable me to do more than to call it to your attention for your consideration.

In regard to these offices, I would beg leave to suggest, if they are continued in existence, that they are local in their nature, per-

sling to each county, or place for which they are created, and should be appointed by some authority in the county for which they act. The county commissioners' court would be much more competent than the Governor is to select suitable persons to weigh cotton, and to inspect cattle and hides.

Respectfully submitted,

O. M. ROBERTS, Governor.

Referred to Committee on State Affairs.

EXECUTIVE OFFICE,  
AUSTIN, January 31, 1881.

To the Honorable the Senate and House of Representatives in the Legislature assembled:

I respectfully submit to you the draft of a bill, representing the views of the Texas State Medical Association, at its annual meeting held at Brenham in April last, prepared and presented by a committee, appointed for that purpose, composed of Drs. McLaughlin, Swearingen, and Wooten, of Austin, Dr. Pope, of Marshall, and Dr. Wallace, of Waco, and ask for it a respectful and favorable consideration. The physicians of the State, I am assured, have long felt the necessity of initiating this movement, and have elayed it on account of the embarrassment of the State in pecuniary matters. They come forward now to tender their aid instituting a State Board of Health for the benefit of the people, upon such a limited plan, as will inaugurate it, as a State institution, without being burdensome in the way of expense. Most of, if not all of, the other States have such an institution.

Respectfully submitted,

O. M. ROBERTS, Governor

An Act to create a Board of Health of the State of Texas, to define the powers and duties thereof, and to make the Secretary thereof ex officio State Health and Quarantine Officer.

Section 1. *Be it enacted by the Legislature of the State of Texas, That* the Governor, by and with the advice and consent of the Senate, shall appoint six persons, at least four of whom shall be regular physicians, in good standing, who, together with the Governor as ex officio a member, shall constitute a board of health for the State of Texas. The persons so appointed shall hold their offices for six years from the date of their qualification; *provided*, that the terms of office of the six first so appointed shall be so arranged that the term of two of them shall expire on the thirty-first day of December of each alternate year; and the vacancies thus created, as well as all vacancies occurring otherwise, shall be filled by the Governor with the advice and consent of the Senate; *and provided also*, that appointments made when the Senate is not in session may be confirmed at its next ensuing session.

Sec. 2. Each county, city and incorporated town in this State shall have authority to select and constitute a local board of health, under such regulations and with such powers as to them may seem proper and necessary, whose duty it shall be to co-operate with the State Board of Health, as far as practicable, in all matters provided for in this act.

Sec. 3. The State Board of Health shall place themselves in communication with the local boards of health, the hospitals, asylums and public institutions throughout the State, and shall take cognizance of the interests of life and health among the citizens generally. They shall make sanitary investigations and inquiries respecting the causes of disease, especially of epidemics, the sources of mortality, and the effects of localities, employments, conditions and circumstances, on the public health; and they shall gather such information in respect to these matters, as they may deem proper for diffusion among the people. They shall devise some scheme whereby medical and vital statistics of sanitary value may be obtained, and act as an advisory board to the State in all hygienic and medical matters, especially such as relate to the location, construction, sewerage and administration of prisons, hospitals, asylums and other public institutions. They shall have authority at any time they may deem proper, either themselves or through agents appointed by them, to visit and inspect all such public institutions, as well as schools and institutions of learning, for the purpose of investigating matters of importance to the public health.

Sec. 4. The State Board of Health shall act as a consulting and advisory board to the Governor in all matters pertaining to quarantine; *provided*, that the authority and control over quarantine vested in the Governor, or by existing laws, or hereafter to be vested in him, shall remain in and be exercised by the Governor.

Sec. 5. The first meeting of the Board shall be within fifteen days after their appointment, and thereafter in January or June of each year, and at such times as the Board shall deem necessary and expedient. The meeting in January of each year shall be in Austin. A majority shall constitute a quorum, and the Board shall choose one of their number to be president, and they may adopt rules and by-laws for their government subject to the provisions of this act.

Sec. 6. They shall elect from among their number a Secretary

who shall keep the records of the Board, perform all clerical duties and discharge the functions prescribed by the Board, and by this act. He shall be the executive officer of the Board, for the purpose of carrying out all measures adopted by them; and the Secretary of the State Board of Health shall be ex-officio, the Medical, Health and Quarantine officer of the State of Texas, charged with all the duties and subject to all the provisions, and clothed with all the powers and authority vested in said official by the articles of title 83 of the Revised Statutes of the State of Texas, and said title is hereby so far amended as to conform to the provisions of this act; *provided*, that the salary herein provided for and to be paid to the Secretary of the Board of Health is in lieu of and substituted for the compensation to be paid the State Medical, Health and Quarantine officer under said title 83 of the Revised Statutes.

Sec. 7. The Secretary shall have an office in the capital, and shall receive an annual salary of \$2,000, together with his traveling and other necessary expenses when on actual duty for the State. The members of the Board of Health shall receive the sum of \$5 per day when on actual duty, together with their necessary traveling and other expenses. The Board, or a majority thereof, shall have authority, in case of an epidemic or threatened epidemic, when deemed necessary, to appoint a clerk to assist the Secretary of the Board, said clerk to receive \$5 per day when thus actively employed.

Sec. 8. It shall be the duty of the Board of Health to make an annual report, through their president and secretary, or otherwise, to the Governor, during the month of January of each year, the same to be printed by the State for general use and distribution, and such report shall include so much of the proceedings of the Board and of their investigations and discoveries, such information concerning vital statistics, such knowledge respecting diseases and such instructions on the subject of public hygiene as may be thought useful for dissemination among the people, together with such suggestions as to legislative action as the Board may deem proper.

Sec. 9. The sum of seventy-five hundred (\$7,500) dollars, or so much thereof as may be necessary, is hereby appropriated to pay the salary of the Secretary, the contingent expenses of the office of the secretary, and the expenses of the Board, together with all costs for printing, for the space of two years from and after the passage of this act, which, together shall not exceed the sum hereby appropriated; said expenses shall be quarterly certified by the president or the Board, and on presentation of his certificate, the Comptroller shall draw his warrant on the State Treasurer for the amount due.

Referred to Committee on Industries, Public Health and History of Texas.

On motion of Senator Buchanan of Wood, the Senate adjourned until to-morrow at 10 A. M.

#### NINETEENTH DAY.

SENATE CHAMBER,  
AUSTIN, February 1, 1881. }

Senate met pursuant to adjournment; the President pro tem. in the chair.

Roll called—quorum present.

Prayer by the Chaplain.

On motion of Senator Shannon, the reading of the journals of yesterday was dispensed with, and the same adopted.

Senator Stubbs, chairman of the Committee on Commerce and Manufactures, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, February 1, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Commerce and Manufactures, to whom was referred Senate joint resolution No. 34, entitled "Joint resolution instructing our Senators and requesting our Representatives in Congress to use their endeavors to procure substantial and suitable appropriations for the attainment of a larger draught of water on the bars of Brazos de Santiago, Aransas and Sabine Pass in the State of Texas," have duly considered the same, and instruct me to report it back and recommend that it do pass with the following amendment:

Insert in lines six and eighteen, after the words "Sabine Pass," the words "Pass Cavallo."

STUBBS, Chairman.

Bill read first time.

Senator Martin of Navarro, chairman of the Committee on Public Roads, Bridges and Ferries, submitted the following report: